Neutral Citation Number: [2024] EWHC 497 (Ch)

Case No: CR-2022-BRS-000101

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS IN BRISTOL**

**IN THE MATTER OF HLHP ORIENTAL FOOD LIMITED; HLHP BIRMINGHAM LIMITED AND HLHP BAYSWATER LIMITED**

**AND IN THE MATTER OF THE COMPANIES ACT 2006**

Bristol Civil Justice Centre
2 Redcliff Street
Bristol BS1 6GR

Date: 5 March 2024

**Before** :

**MR JUSTICE ZACAROLI**

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**Between :**

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| **(1) MAGGIE OTTO**<br>**(2) TAO XU**<br>**(3) IC UK HOLDINGS LIMITED**<br>**(4) JESSICA PUI MAN KWOK** | **Petitioners** |
| **- and –** | |
| **(1) INNER MONGOLIA HAPPY LAMB CATERING MANAGEMENT COMPANY LIMITED**<br>**(2) XIAOBING LIU**<br>**(3) ZHANHAI ZHANG**<br>**(4) GANG ZHANG**<br>**(5) CHANGSONG WANG**<br>**(6) HLHP ORIENTAL FOOD LIMITED**<br>**(7) HLHP BIRMINGHAM LIMITED**<br>**(8) HLHP BAYSWATER LIMITED** | **Respondents** |

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**Charlie Newington-Bridges** (instructed by **Shakespeare Martineau LLP**) for the **Petitioners**
**Edward Davies KC** (instructed by **Stewarts Law LLP**) for the **first to fifth Respondents**

Hearing dates: 4 & 5 March 2024

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**JUDGMENT**

**Mr Justice Zacaroli:**

1. I have before me two applications, made on the first day of the trial of this petition under s.994 of the Companies Act 2006. The petition relates to three companies: HLHP Oriental Food Limited ("Oriental"); HLHP Birmingham Limited ("Birmingham") and HLHP Bayswater Limited ("Bayswater").

2. The Petitioners are Ms Maggie Otto ("Ms Otto"), Mr Tau Xu ("Mr Xu"); IC UK Holdings Limited ("ICUK") and Ms Jessica Pui Man Kwok ("Ms Kwok").

3. The Respondents are Inner Mongolia Happy Lamb Catering Management Company ("Happy Lamb"), Xiaobing Liu ("Mr Liu"), Zhanhai Zhang ("Mr Z Zhang"), Gang Zhang ("Mr G Zhang"), Changsong Wong ("Mr Wong"), Oriental, Birmingham and Bayswater.

4. The Petitioners' claims in respect of Birmingham have been abandoned, it being common ground that there is no value in the shares of that company.

5. The Petition pleads that each of the Petitioners is a member of Oriental, and that Ms Kwok is a member of Bayswater. It is now accepted that neither Ms Otto nor Mr Xu is or ever was a shareholder in Bayswater, and their claims in relation to that company have been abandoned.

6. All of the Petitioners contend that the affairs of Oriental have been conducted in a manner which is unfairly prejudicial to them. ICUK and Ms Kwok plead that the affairs of Bayswater have been conducted in a manner which is unfairly prejudicial to them (although, as I note below, since it is not alleged that ICUK continues to hold shares in Bayswater, it has no sustainable claim under s.994 in relation to that company).

7. The first application is by the Respondents for permission to amend the points of defence to withdraw admissions made that the Petitioners are members of Oriental, and to withdraw admissions that Ms Kwok is a member of Bayswater.

8. The second application is by the Petitioners to amend the petition to include a claim for (1) a declaration as to who are the legal shareholders of Oriental and Bayswater; and (2) rectification of the register of members for Oriental and Bayswater.

<u>The Respondents' amendment application</u>

9. The points of defence admit the following allegations made in the Petition: (1) the shares in Oriental are held by, among others, Ms Otto (as to 5%), Mr Xu (as to 2%), ICUK (as to 5%), and Ms Kwok (as to 1%); and (2) Ms Kwok holds 1% of the shares in Bayswater.

10. I will address first the position in relation to Oriental.

11. It was only upon new solicitors and counsel being instructed by the Respondents at the beginning of this year that the Petitioners' entitlement to petition has been questioned. Even then, however, the objections raised by the Respondents related to aspects other than the Petitioners' entitlement to petition in relation to Oriental. The Respondents issued a strike out application, based on those other matters, including

the fact that the Petition did not even assert that the first three Petitioners were shareholders of Bayswater. One matter which the Respondents did raise was the lack of any clarity in the Petitioners' claim that their shares in Oriental had been "expropriated". The Respondents sought clarity as to what that meant: for example, whether it was said to have been achieved by a reduction in capital or via share transfers.

12. These points were raised at the PTR on 8 February. I refused to entertain the Respondents' strike out application at that point, on the basis, essentially, that it was brought too close to trial, and there was no available court time to deal with it before trial in any event. The Respondents made a request under CPR Part 18 for further information in relation to the supposed expropriation of shares. Without clarity on that issue, they sought to amend the points of defence to put in issue, via a non-admission, whether the Petitioners were shareholders in Oriental and Bayswater.

13. Since then, two things have happened. First, on 28 February 2024, the Petitioners 'disclosed' to the Respondents the share register for Oriental. This records as shareholders upon incorporation (in 2017): (1) as to 48% of the shares, a company called Hong-Otto Investment Management Company Limited, which subsequently changed its name to In Touch Investment Holding Limited ("In Touch"), the shares in which were originally held by Ms Otto and the wife of Mr Liu; (2) as to 2% of the shares, Mr Xu, (3) as to 17.5% of the shares, Yugang Li, (4) as to 16.5% of the shares, Jimin Fu, and (5) as to 16% of the shares, Fengqi Li. The latter three shareholders are said to have held their shares on behalf of Inner Mongolia. None of these three gentlemen has played any role in Oriental beyond holding shares at the outset.

14. In fact, the share register, which had at all times been in the possession of the Petitioners (Ms Otto having liaised with accountants at the time of incorporation in October 2017 to set up the appropriate company records) had been included within the Petitioners' disclosure provided in June 2023. It had been included, however, within a sub-group of documents contained within a data room, identified merely as "company documents". It is evident that neither the Petitioners nor the Respondents focused on it at all, prior to last week.

15. Had the Petitioners had it in mind, they could never have pleaded that Ms Otto, ICUK or Ms Kwok were members of Oriental. Had the Respondents seen it at the time of filing their defence, they would never have made the admissions they did.

16. Second, the Petitioners have admitted (via the trial skeleton of their counsel, Mr Newington-Bridges) that there are no stock transfer forms in existence.

17. It is in light of these matters that the Respondents have issued their application to withdraw their admissions, and to positively deny that Ms Otto, ICUK or Ms Kwok are shareholders in Oriental.

18. Pursuant to s.994, a "member" may apply by petition. A member is defined by s.112 as (1) the subscribers of a company's memorandum (who are deemed to become members and must be entered as such on its register) and (2) "every other person who agrees to become a member of a company, and whose name is entered in its register of members."

19. Section 994 also applies to someone who is not a member but "to whom shares in the company have been transferred or transmitted by operation of law". Mr Davies KC, who appeared for the Respondents, submitted that this extends standing only so far as a person in whose favour a transfer of shares has been executed, but who has not yet been entered on the register. This was not challenged by the Petitioners. Mr Newington-Bridges accepted that, in relation to Oriental, the Petition could only proceed, so far as Ms Otto, ICUK and Ms Kwok were concerned, if the register was rectified to include them as shareholders.

20. Under s.770, a company may not register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to it (unless certain irrelevant exceptions apply).

21. Mr Newington-Bridges submits that the Respondents' application to withdraw the admissions is made too late and should be refused.

22. CPR 14.5 deals with applications to amend admissions made after the start of proceedings. The court is required to have regard to all the circumstances of the case, including the following seven factors:

> "(a) the grounds for seeking to withdraw the admission;
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> (b) whether there is new evidence that was not available when the admission was made;
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> (c) the conduct of the parties;
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> (d) any prejudice to any person if the admission is withdrawn or not permitted to be withdrawn;
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> (e) what stage the proceedings have reached; in particular, whether a date or period has been fixed for the trial;
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> (f) the prospects of success of the claim or of the part of it to which the admission relates; and
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> (g) the interests of the administration of justice."

23. Both parties referred me to *Tut v Ministry of Defence* [2023] EWHC 2834 (KB) in which HHJ Pearce, at §8, summarised certain principles to be derived from the cases. These included:

> (1) the factors listed within part 14.5 are not hierarchical, the court must have had regard to each and every one of them giving them due weight in the particular circumstances of the case and balancing those matters so as to strike a result which accords with the overriding objective – see *Woodland v Stopford* [2011] EWCA Civ 266.
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> (2) an application to resile is not barred by the fact that the error is on the initial assessment of liability rather than that the application is being made on the basis of new evidence or material becoming available – again see *Woodland*.

(3) the court should be given a full and frank explanation as to the circumstances in which the admission was made and the basis upon which it is sought to be withdrawn – again see *Woodland*.

(4) where the change of position of the party who has made the admission arises from a reassessment of the material that was previously available to it, the authorities suggest that the overriding objective may favour the refusal of permission to withdraw this admission. In this respect, the claimant has drawn my attention in particular to two cases. First, the judgment of Mr Justice William Davis, as he then was, in *Cavell v Transport for London* [2015] EWHC 2283 in which he said at paragraph 16:

> "It cannot be in those interests [that is to say the interests of the administration of justice] to permit the withdrawal of an admission made after mature reflection of a claim by highly competent professional advisors when there is not a scintilla of evidence to suggest that the admission was not properly made. Were it to be otherwise civil litigation on any sensible basis would be impossible."

24. Mr Newington-Bridges submitted, in relation to the various factors to take into account, as follows: (1) this is not a case where there is new evidence; the share register was disclosed as long ago as last June; (2) the Respondents should have sought to resile from the admissions months ago; (3) the Respondents have conducted themselves right up until the PTR a few weeks ago, on the basis that the Petitioners were shareholders – for example the lists of issues have never identified the Petitioners' standing as being something that was in issue; (4) moreover, since at least early 2021 the Respondents have been in de facto control of the company so that, while it is true that the Petitioners had possession of the register, the Respondents could have asked to see it; and (5) as to lateness, this is about as late as an application could be made, being the first day of trial.

25. These are powerful points, persuasively put. But, they are outweighed, in my judgment, by two factors.

26. First, it is for the Petitioners to establish standing. In preparing the Petition they ought to have considered how they could prove that they were entitled to petition. They wholly failed to do so. As I have noted, the register was in their possession all along, and it was incumbent on them – or their legal advisers – to be satisfied that they were indeed members of the company. That failure was neither caused by nor contributed to in any way by the Respondents' later admissions.

27. Second, as Mr Newington-Bridges candidly accepted, irrespective of the admission by the Respondents, the Court must be satisfied that the Petitioners have standing. In some cases – for example if the claimant pleads an agreement, which the defendant admits, the court may proceed on the basis that there was an agreement, simply on the basis that it is admitted.

28. Mr Newington-Bridges accepted, however, that it is different in respect of the 'gateway' requirement that a petitioner falls within s.994 (1) or (2) before it has

standing to petition under s.994. The court must, irrespective of any admission by the Respondents, be satisfied that the Petitioners have such standing.

29. He suggested that in considering that question I could take into account all the circumstances, including the fact of the admission by the Respondents. He accepted, however, that in circumstances where the evidence (i.e. the register and the lack of any stock transfer forms) demonstrates beyond doubt that the Petitioners did not have standing to sue, the fact of the admission in the points of defence was ultimately of no weight. That must be right. If, for example, the court were to be satisfied that there was unfair prejudice and ordered a buyout of the Petitioners' shares, that simply could not be done if they do not hold any shares. That could not be overcome by relying on the defendants' admission.

30. Accordingly, I allow the Respondents to amend the Petition to withdraw the admissions in respect of Oriental.

31. As to Bayswater, the same conclusion follows, for the same reasons. It is only Ms Kwok that is affected, as it was only her holding of 1% of the shares in Bayswater that was admitted in the points of defence.

<u>The Petitioners' application to amend to plead a declaration and rectification</u>

32. Mr Newington-Bridges made a number of powerful points in support of this application.

33. First, he repeated the points about the lateness of Respondents' application to resile from their admissions. It was only upon the withdrawal of the admission that it became necessary to consider rectification of the register.

34. I accept that the Respondents must shoulder at least some of the blame for the fact that we have arrived at trial without the Petitioners' standing having been identified as an issue. While the Petitioners are guilty of making a mistake at the outset, that has been acquiesced in by the Respondents ever since.

35. That only goes so far, however. As I have already noted, irrespective of the admission, the Petitioners bear the burden of establishing that they are in fact entitled to petition, and they are not relieved of that burden simply because the Respondents have admitted that they are shareholders. Nor can the admission have any relevance in relation to the Petitioners' failure to establish before launching these proceedings that they were shareholders in the relevant companies.

36. Second, he submitted that the extent to which there has been common ground as to the Petitioners' shareholdings goes far beyond the pleading. He is right in this regard. The Respondents' witness statements are littered with express, and implicit, references to the Petitioners holding shares in Oriental. Successive filings at Companies House (including those which have been made since the Respondents are in de facto control of the companies) have purported to record each of the Petitioners as shareholders of Oriental and Bayswater in the proportions which they now claim to hold their shares. It is common ground that the Petitioners all invested money in the companies. When at least part of that investment was repaid, that coincided with purported reductions in their shareholding. Most significantly, the minutes of an

AGM of the three companies contain a schedule of all of the purported shareholdings in the companies, which records Ms Otto as holding 5% of the shares in Oriental, ICUK as holding 5% of the shares in Oriental, Mr Xu has holding 2% of the shares in Oriental, and Ms Kwok as holding 1% of the shares in Oriental and Bayswater. This is signed by a representative of each of the purported shareholders, including at least some of the Respondents.

37. It would be profoundly unfair, Mr Newington-Bridges submitted, to preclude the Respondents from applying to rectify the register to ensure that it reflected the position that has long been common ground among all parties.

38. The position, however, is not as simple as that. As Mr Davies pointed out, there are considerable procedural and substantive difficulties in the way. Moreover, given the lateness of this application, neither party has had sufficient time to address all of these. Neither side produced a skeleton argument, and authorities have been produced, and relied on, very late.

39. First, all of the Petitioners' purported title to shares depends upon them having acquired their shares via one or other transfer from another shareholder. Where there is no share register at all, and where the question is what shares were allotted at the outset, then the Court may be able to conclude, from all the available evidence, that it was intended that x, y and z (as the case may be) were shareholders, and to rectify the register retrospectively to reflect that intention: see, for example, *Re I Fit Global Ltd* [2014] 2 BCLC 116, per Roth J.

40. It was common ground before me, however, that this approach cannot be adopted where there <u>is</u> a share register, and where the title of those seeking rectification in their favour depends upon establishing that shares were transferred to them.

41. Second, this case depends upon establishing multiple transfers of shares, carried out on various occasions between 2017 and 2020. Without duly executed stock transfer forms, the companies are precluded from registering the transferee as shareholder. Execution of such forms would likely give rise to a liability to stamp duty which, given the informality surrounding these companies, has almost certain not been paid to date.

42. Third, it is not sufficient for the Petitioners to rely on the fact that (as I have noted on the basis of the documents referred to above) all parties have proceeded on the assumption that the Petitioners do hold the shares which they purport to hold. Putting aside the fact that legal title can only be established by a duly executed transfer of shares, where the Petitioners' claim to the shares depends on establishing that they acquired them (if only in equity) pursuant to some transaction, then it is necessary to establish that such transaction took place and that it gave rise to an entitlement to have the relevant shares transferred at law. If that cannot be established, then the common assumption may turn out to be simply a commonly shared mistake.

43. Fourth, the Petitioners' case on when and how they acquired shares is, at best, inadequately particularised and, at worst, inconsistent with the proposed amended claim for declarations and rectification. The Court will be reluctant to permit an amendment, particularly at this late stage, where the basis of the claim sought to be introduced is unclear and inadequately particularised.

44. The starkest example of this relates to Ms Otto's shares. The Petition pleads that in, January 2020, 15,000 shares which were then held by In Touch were "expropriated". The purported transactions recorded at Companies House indicate that this was achieved by a transfer of 10,000 shares to the second and fourth Respondents and the transfer of 5,000 shares to Ms Otto. The Petitioners' claim, however, is that this expropriation was ineffective. In other words, the Petitioners do not plead that there was any effective agreement for the transfer of shares from In Touch to Ms Otto. The problem is that this transfer of shares from In Touch to Ms Otto is the only possible basis on which Ms Otto herself (as opposed to her company, In Touch) acquired shares. Accordingly, the current pleading flatly contradicts a claim to rectify the register to include Ms Otto as shareholder.

45. So far as ICUK is concerned, it contends that it became a shareholder as a result of a co-operation agreement in or about September 2018. This appears to have coincided with the shares of In Touch being reduced from 48% to 15%, which implies that ICUK received its shares from In Touch. The evidence of Ms Li (the shareholder and director of ICUK), however, is simply that she was "shocked to know that [Ms Otto's] share had been diluted and in some way transferred to me…" Ms Otto herself does not provide evidence that the purported re-organisation of the shares in about September 2018 was done with her (or – therefore – In Touch's) consent or agreement. There is no clearly defined case, therefore, as to through what legal mechanism ICUK was intended to acquire shares from In Touch, or any other shareholder.

46. In my judgment, the inadequate state of the pleading in respect of the proposed claim for declarations and rectification is itself a reason to refuse permission to amend at this stage.

47. Fifth, a further reason to disallow the amendment and to permit the rectification claim to proceed now, is that – since the issue has been raised so late in the day – neither the disclosure nor the witness evidence has been directed at the right questions. This was a point Mr Newington-Bridges prayed in aid as part of his submission that the amendment should be allowed because everyone had proceeded – including when doing disclosure and witness statements – on the basis that the Petitioners' standing as shareholders was not in issue. While it may be the case that all relevant documents have already been disclosed – given the breadth of the "issues of disclosure" upon which searches would have been undertaken for relevant documents – neither side could be sure of that. Moreover, while there is plenty of evidence in the witness statements as to the common assumption that the Petitioners are all shareholders, there is (as I have already pointed out) a dearth of evidence as to *how* they are said to have become shareholders.

48. Sixth, in any claim for rectification it is necessary to join as respondents at least those whose shares are affected. The application as currently formulated seeks rectification of the register so as to correct all errors. That would result in the registration of each of Yugang Li, Jimin Fu and Fengqi Li being deleted. The application could not proceed without them being joined. Similarly, insofar as the application seeks to have others included on the register, it could not proceed without them being joined.

49. Mr Newington-Bridges sought to overcome this difficulty by conceding that the application could be narrowed in scope, so as to rectify the register solely by adding

Ms Otto, ICUK and Ms Kwok as shareholders. Mr Davies objected that it would be inappropriate to proceed on this hybrid basis: amending the register so as to correct only some of the alleged errors.

50. More fundamentally, however, there is a currently insurmountable problem even with this slimmed down approach. That is because the registered holder of the shares to which Ms Otto, ICUK and Ms Kwok lay claim is In Touch. Mr Newington-Bridges accepted that In Touch, at least, would have to be a party. It has however, been dissolved. It would therefore have to be restored to the register. That is a process which cannot be done overnight. The Treasury Solicitor needs to be involved, and the process would be likely to take weeks, if not months. It was at one point suggested that this might be circumvented because Ms Otto was the sole shareholder and director of In Touch at the point of its dissolution. Even if that would be enough to circumvent the need to restore In Touch (which is doubtful), there is a similar problem in relation to In Touch as there is in relation to the other companies: as I understand it, Ms Otto cannot clearly establish that she is the sole shareholder without first applying to rectify the register.

51. This point alone demonstrates the impossibility of proceeding at this trial with the proposed rectification application. Since it is common ground that the Petition cannot be proceeded with unless and until the register is rectified, the vast bulk of the trial would inevitably have to be adjourned if the amendment were permitted.

52. Mr Davies also contended that, even if rectification were allowed, it is presently unclear whether that would save the Petitioners' claims in the petition. Since there has not, on any view, so far been any transfer of legal title to the shares, it is not clear to see how rectification could be ordered retrospectively. If that is the case, it raises the separate problem of whether a shareholder can claim in respect of unfairly prejudicial conduct before they acquired their shares. Mr Davies did not suggest that this was impossible, but that it was a further matter which would need to be, but in the time available had not been, explored. This is a further reason, therefore, why it would be unfair to allow the rectification application to be made now, in the context of this trial.

53. Mr Davies further contended that it is not in any event possible to determine, within the confines of an application for rectification of the register, questions as to entitlement to shares such as those that need to be resolved in this case.

54. Section 125 of the Companies Act 2006 provides as follows:

> "(1) If a company's register of members—
>
> (a) does not include information that it is required to include, or (b) includes information that it is not required to include, the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the register.
>
> (2) The court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved.

> (3) On such an application the court may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand, and generally may decide any question necessary or expedient to be decided for rectification of the register."

55. Mr Newington-Bridges submitted that ss.(3) is broad enough to enable the court, on an application to rectify the register, to resolve disputes about entitlement to shares as between members, as well as between members and the company. That was the conclusion reached by the Court of Appeal in *Re Hoicrest Ltd* [2001] 1 BCLC 194, a case in which the claimant (K) claimed that half of the shares held by the registered shareholder (M) were held on trust for him. M objected that there was no jurisdiction to entertain K's application under s.125 because K could not produce a legal transfer of the shares, and until he could do so there was a sufficient cause for omitting his name from the register of members.

56. The Court of Appeal disagreed, pointing to the language of ss.(3) permitting the court to decide any question relating to the title of the person who is a party to the application to have his name entered on the register. At p.199b-c Mummery LJ said this:

> "It is true that, as Mr Taube contends, Mr Keene must establish that he has title to be entered in the register as a member in respect of the 49 shares. But, if there is a dispute about that title, sub-s (3) empowers the court 'on such an application' to decide that question. It is true that the court would not make an order which required the company or its board to act in contravention of s 183 or the articles. But that inhibition on making an order does not prevent the court from resolving, prior to deciding whether or not to make an order for rectification, relevant disputes about entitlement to the shares."

57. As I read that passage, Mummery LJ was acknowledging that the jurisdiction under s.125(3) is broad enough to permit resolution of substantive disputes as to the entitlement to shares, but it would still be necessary – following resolution of such a dispute – for the applicant to acquire legal title to the shares before the register could be rectified. Thus, for example, if the applicant claimed an entitlement to the shares pursuant to a contract with an existing shareholder, the court could resolve the question of contractual entitlement under ss.(3), but it would still be necessary to order specific performance of that contract, by execution of a stock transfer form – before the register could be rectified to show the applicant as shareholder.

58. Mr Davies relied on *Nilon v Westminster Investments SA* [2015] BCC 521, in which the Privy Council concluded that the equivalent in the BVI of s.125 permitted an application for rectification only where the applicant had a right to registration by virtue of a valid transfer of legal title, and not merely a prospective claim against the company dependent on the conversion of an equitable right to a legal title by an order of specific performance of a contract. Lord Collins, delivering the Opinion of the Board, concluded at §51 that *Re Hoicrest* was wrongly decided. That was because the weight of authority supported the conclusion that the summary procedure within s.125

(and its BVI equivalent) could not be used to resolve disputes about beneficial ownership and specific performance.

59. Mr Davies conceded, however, that I am bound by *Re Hoicrest* – a decision of the Court of Appeal of England and Wales – however persuasive the decision of the Privy Council may be.

60. In the end, this debate is something of a sideshow in this case. In *Re Hoicrest*, the only proceedings on foot were for rectification. The Court of Appeal's decision was essentially a case management decision about the appropriate forum in which to resolve the dispute as to entitlement to the shares.

61. In this case, the application for rectification is not a stand-alone application, but is sought to be introduced into existing proceedings. For the reasons I have already given, those proceedings cannot continue now, since the application to rectify the register cannot proceed unless and until In Touch is first restored to the register.

62. On the assumption that the Petitioners are able to pursue a claim to establish their entitlement to the shares, the question is purely a case management question as to the appropriate forum within which that entitlement is to be established.

63. For present purposes, the only case management decision I need to make is whether to allow the amendment that is proposed today, so as to permit the application for rectification to be made. For all the reasons I have given, I refuse permission to amend the Petition to include a claim for rectification. I rely in particular on the facts that (1) the formulation of the proposed claim is insufficiently clear – and contradicted by the evidence of at least two of the Petitioners themselves – to permit the amendment in its current form; and (2) the application could not in any event proceed now, including because it cannot do so without the restoration and joinder of In Touch.

64. I will discuss with counsel where that leaves this trial, the status of the Petition, and the claims of all those who contend they are shareholders of the companies.